

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Public Safety Communications in the)	WT Docket 02-55
800 MHz Band)	
)	
Petitions for Waiver of Bethlehem, Pennsylvania)	
and Reading, Pennsylvania)	
)	
Petitions for Waiver of Rockdale County, Newton)	
County, City of Covington, Walton County, and)	
Spalding County, Georgia)	

THIRD MEMORANDUM OPINION AND ORDER

Adopted: September 11, 2007

Released: September 12, 2007

By the Commission: Chairman Martin and Commissioners Copps and Tate issuing separate statements.

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we find that Sprint Corporation (Sprint) has not met the December 26, 2006, eighteen-month benchmark for clearing Channel 1-120 incumbents as required by the 800 MHz rebanding process. In that connection, we deny the portion of Sprint's Petition for Reconsideration that sought "clarification" of the eighteen-month benchmark.¹ Although we do not impose fines or forfeitures on Sprint for not meeting the benchmark, we establish additional benchmarks to ensure timely clearing of the Channel 1-120 band by all incumbent licensees, including Sprint itself. We also require Sprint to provide monthly reports on its channel-clearing efforts. In addition, we clarify the 30-month rebanding benchmark, which requires all 800 MHz licensees that must reband to have "commenced" reconfiguration of their systems by December 26, 2007.²

2. We also address several petitions by NPSPAC licensees to extend their rebanding deadline until after incumbent analog broadcasters operating in their area on TV Channel 69 have vacated the spectrum as part of the DTV transition. We grant petitioners' requests in part and will allow them to delay the commencement of their base station infrastructure retuning until March 1, 2009, after the Channel 69 incumbents in their area have vacated the spectrum.

II. BACKGROUND

3. In the *800 MHz Report and Order*, the Commission ordered the rebanding of the 800 MHz band to resolve interference between commercial and public safety systems in the band.³ In that *Order*,

¹ See Petition for Reconsideration filed by Sprint Nextel Corporation on January 27, 2006 (Sprint Petition). The *800 MHz Second Memorandum Opinion and Order* deferred to this *Order* assessing Sprint's compliance with the eighteen-month benchmark consideration of Sprint's Petition relative to the eighteen-month benchmark. *Infra* note 3.

² 47 C.F.R. § 90.677(a).

³ Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, et al., *Report and Order*, Fifth (continued....)

the Commission required Sprint to complete retuning of Channel 1-120 licensees (*i.e.*, licensees operating in the 806-809/851-854 MHz band) in twenty NPSPAC regions within eighteen months of the start of the 36-month rebanding period.⁴ In the *800 MHz Supplemental Order*, the Commission modified this benchmark to require Sprint to relocate all Channel 1-120 incumbents other than Sprint and SouthernLINC in “the first twenty NPSPAC Regions the Transition Administrator has scheduled for band reconfiguration.”⁵ The Commission also required Sprint to have initiated retuning negotiations with all NPSPAC licensees in the same twenty regions by the eighteen-month benchmark date.⁶

4. *Petition for Reconsideration.* In a Petition for Reconsideration filed in January 2006, Sprint requested that we “clarify” the nature of the eighteen-month rebanding benchmark.⁷ Sprint objected to using the TA’s Regional Prioritization Plan (RPP)⁸ as the basis for identifying the twenty regions in which Channel 1-120 clearing must occur by the benchmark date.⁹ Sprint argued that the RPP is too rigid and “front loaded” with large markets. Sprint also noted that under the RPP, there are fifteen NPSPAC regions in Wave 1 and twenty-two in Wave 2, making it unclear which regions would be considered the “first” twenty for benchmark purposes.¹⁰ Accordingly, Sprint sought “clarification” that it would have discretion to select the 20 NPSPAC regions that would count towards the benchmark.¹¹

5. In June 2006, various public safety organizations filed a letter in partial support of Sprint’s petition.¹² While supporting Sprint’s objections to the use of the RPP to determine the benchmark regions, the June 2006 Public Safety Letter did not support allowing Sprint to choose the regions unilaterally. Instead, the letter proposed that “there should be sufficient flexibility for the TA to work with the stakeholders to ensure that the 1-120 channels are retuned in at least twenty regions within eighteen months in a manner that reflects the Commission’s goals of addressing areas with significant interference problems as early as possible, ensuring that Sprint Nextel and all other parties remain on

(Continued from previous page)

Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, 15021-45, 15069 ¶¶ 88-141, 189 (2004) as amended by Erratum, 19 FCC Rcd 19651 (2004), and Erratum, 19 FCC Rcd 21818 (2004) (*800 MHz Report and Order*); *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004) (*800 MHz Supplemental Order*); *Memorandum Opinion and Order*, 20 FCC Rcd 16015 (2005) as amended by Erratum, 20 FCC Rcd 18970 (2005); and *Second Memorandum Opinion and Order*, 22 FCC Rcd 10467 (2007).

⁴ *800 MHz Report and Order*, 19 FCC Rcd at 15130 ¶ 346.

⁵ *800 MHz Supplemental Order*, 19 FCC Rcd at 25143 ¶ 53. The 36-month reconfiguration period began on June 27, 2005. Accordingly, the eighteen-month benchmark date was December 26, 2006.

⁶ *Id.*

⁷ *Id.* at 25143-44 ¶¶ 51-55.

⁸ See Regional Prioritization Plan of the 800 MHz Transition Administrator, WT Docket No. 02-55, filed January 31, 2005 (RPP). The TA’s band reconfiguration schedule may be viewed at www.800ta.org. The WTB approved the TA’s plan on March 11, 2005. See Wireless Telecommunications Bureau Approves the Basic Reconfiguration Schedule Put Forth in the Transition Administrator’s 800 MHz Regional Prioritization Plan, *Public Notice*, 20 FCC Rcd 5159 at Appendix (WTB 2005).

⁹ Sprint Petition at 15-16.

¹⁰ *Id.* at 17.

¹¹ *Id.* at 15-16. Preferred Communications opposed Sprint’s request, arguing that Sprint should not be allowed to “cherry pick” regions for purposes of meeting the benchmark. Opposition to Sprint Nextel Corporation Petition for Reconsideration, filed March 23, 2006, by Preferred Communication Systems, Inc. (Preferred Opposition) at 6.

¹² See *Ex Parte* Letter dated June 1, 2006, from Association of Public Safety Communications Officials-International, Inc., International Association of Chiefs of Police, International Association of Fire Chiefs, Major Cities Chiefs Association, Major Counties Sheriffs Association, National Sheriffs Association to Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau, FCC, WT Dkt. No. 02-55 (June 2006 Public Safety Letter).

track towards expeditious reconfiguration of the 800 MHz band, and avoiding disruption to critical public safety communications systems.”¹³

6. *Sprint Benchmark Compliance Showing.* On January 26, 2007, Sprint filed a report with the Public Safety and Homeland Security Bureau on the status of 800 MHz band reconfiguration and the steps Sprint had taken to meet the eighteen-month benchmark.¹⁴ In its report, Sprint stated that as of the December 26, 2006, benchmark date, it had completed clearing and relocation of all Channel 1-120 incumbents, other than Sprint and SouthernLINC, in 26 of 55 NPSPAC regions, including seven Wave 1 regions, sixteen Wave 2 regions, two Wave 3 regions, and one Wave 4 region.¹⁵ Sprint also stated that in nine additional NPSPAC regions, it had completed Frequency Reconfiguration Agreement (FRA) negotiations with all Channel 1-120 incumbents, and that 93 percent of these incumbents had been cleared from Channels 1-120 and relocated to other portions of the 800 MHz band.¹⁶ Finally, Sprint stated that it had commenced negotiations with all NPSPAC licensees in 37 NPSPAC regions. Sprint contended that its performance should be deemed sufficient to meet the benchmark requirements.¹⁷

7. On March 6, 2007, the Bureau requested that the TA certify that Sprint had completed the rebanding activities described in the Sprint Report.¹⁸ The Bureau noted that although the *800 MHz Report and Order* directed the TA to “certify” that Sprint had met the eighteen-month benchmark, Sprint’s petition for reconsideration seeking clarification of the benchmark was pending with the Commission. The Bureau concluded that while this petition was pending, it would not be appropriate for the TA to draw any legal conclusions regarding whether Sprint’s rebanding activities were sufficient to meet the benchmark. Instead, the Bureau requested that TA certify only that Sprint had completed the rebanding activities described in the Sprint Report.¹⁹

8. On March 20, 2007, the TA filed its certification of Sprint’s performance.²⁰ The TA found that in the 26 NPSPAC regions claimed by Sprint to have been cleared of Channel 1-120 incumbents as of December 26, 2006, it was able to certify clearing of all incumbents except one licensee in Region 25 (Montana).²¹ With respect to the one licensee, the TA indicated that it had no reason to dispute Sprint’s assertion that the licensee’s Channel 1-120 frequencies were cleared, but that it could not certify clearance without written confirmation from the licensee.²² The TA also found that Sprint had initiated negotiations with most NPSPAC licensees in the 37 regions it identified, but that Sprint had failed to contact a total of twelve NPSPAC licensees in five regions to initiate negotiations by the

¹³ *Id.* at 2.

¹⁴ Progress Report dated January 26, 2007, from Lawrence R. Krevor, Vice President – Spectrum Sprint Nextel Corporation and James B. Goldstein, Director – Spectrum Reconfiguration, Sprint Nextel Corporation, to David L. Furth, Associate Chief, Public Safety and Homeland Security Bureau (Sprint Report).

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 8-9.

¹⁸ Letter dated March 6, 2007, from David L. Furth, Associate Chief, Public Safety and Homeland Security Bureau, to Robert B. Kelly and Brett S. Haan, WT Docket 02-55, 22 FCC Rcd 4465.

¹⁹ *Id.* at 1.

²⁰ Letter dated March 20, 2007 from Brett Haan, 800 MHz Transition Administrator, LLC to David L. Furth, Associate Bureau Chief, Public Safety and Homeland Security Bureau, WT Docket 02-55 (TA Certification).

²¹ *Id.* at 3.

²² *Id.*, Schedule A.

benchmark date.²³

III. DISCUSSION

A. Eighteen Month Benchmark

1. Petition for Reconsideration

9. As a threshold matter, we deny Sprint's request to redefine the eighteen-month benchmark as proposed in its Petition for Reconsideration. In its petition, Sprint asserts the right to decide unilaterally which regions will count towards compliance with the benchmark. Although characterized as a request for "clarification," Sprint's petition in fact seeks a substantive change to the benchmark definition, which was never intended to allow Sprint to select regions unilaterally for benchmark compliance purposes. In substance, therefore, Sprint's request constitutes a request for reconsideration, and as such, it is procedurally defective because it is untimely. Sprint filed its petition on this issue in response to the Commission's October 2005 *Memorandum Opinion and Order*. However, the Commission last modified the eighteen-month benchmark in the December 2004 *800 MHz Supplemental Order*, and did not modify or otherwise address the benchmark issue in the *Memorandum Opinion and Order* or any other subsequent order.²⁴ Thus, Sprint's request to modify the eighteen-month benchmark is time-barred because Sprint did not seek reconsideration of the issue in response to the *800 MHz Supplemental Order*.²⁵

10. Even if we were to consider Sprint's request on the merits, we continue to believe that the eighteen-month benchmark as defined in the *800 MHz Supplemental Order* should be retained. The Commission adopted the eighteen-month benchmark requirement because clearing Channel 1-120 incumbents is a prerequisite to relocating NPSPAC incumbents into this portion of the band from the former NPSPAC band. The eighteen-month benchmark also permits the Commission to assess the pace of band reconfiguration midway through the process and, if necessary, take corrective actions to ensure continued progress. The Commission charged the TA with establishing a relocation schedule "prioritizing the regions on the basis of population" and authorized the TA to move up in priority those regions "encountering unusually severe amounts of unacceptable interference."²⁶ Given the importance of Channel 1-120 clearing to the overall progress of rebanding, the Commission concluded that the eighteen-month benchmark should track the priorities established by the TA in determining the region-by-region timetable for rebanding. By contrast, allowing Sprint the unilateral discretion to pick twenty regions for purposes of benchmark compliance would undermine the purpose of the benchmark by allowing band reconfiguration to occur on a piecemeal basis without any clear criteria. Additionally, adopting Sprint's proposal would undermine the Commission's ability to enforce Sprint's rebanding obligations and take corrective action if reasonable progress has not been made.²⁷

2. Sprint's Compliance With the Eighteen Month Benchmark

a. Clearing of Channels 1-120 in First 20 Regions

11. We now review the Sprint Report and the TA's certification to determine whether Sprint

²³ *Id.*, Schedule B.

²⁴ See *800 MHz Supplemental Order*, 19 FCC Rcd at 25143-44 ¶ 53.

²⁵ The *800 MHz Supplemental Order* became final on February 8, 2005. Therefore, petitions for reconsideration of the *Supplemental Order* were time-barred after March 10, 2005. See 47 U.S.C. § 405(a) (Section 405 specifies in part that a "petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order ... complained of").

²⁶ 47 C.F.R. § 90.676(4). The TA may also "direct that adjoining regions be reconfigured simultaneously when conditions so require." *Id.*

²⁷ *800 MHz Report and Order*, 19 FCC Rcd at 15130 ¶ 347.

has met the eighteen-month benchmark as defined in the Commission's orders. As noted above, the first benchmark requirement is that Sprint must have relocated all non-Sprint, non-SouthernLINC incumbents from Channels 1-120 in the "first twenty NPSPAC Regions that the Transition Administrator has scheduled for band reconfiguration."²⁸ We define the "first twenty" regions as including all fifteen regions included in Wave 1 of the TA's RPP timetable. At the time the TA established the RPP, the TA stated that it selected regions for Wave 1 that had the highest priority for rebanding due to their high population and the relative frequency of interference complaints in these regions.²⁹ Therefore, their inclusion in the eighteen-month benchmark is particularly critical to the rebanding process. In addition to the fifteen Wave 1 markets, we define the "first twenty" regions as including five Wave 2 regions. Because there are twenty-two regions in Wave 2, and the TA did not distinguish among them in the Wave 2 portion of the RPP, we conclude that Sprint may meet this element of the benchmark by showing that it has cleared any five Wave 2 regions in addition to the fifteen Wave 1 regions.

12. Based on the record before us, we conclude that Sprint has not met this element of the eighteen-month benchmark because as of the benchmark date, it had not fully cleared Channel 1-120 incumbents in all fifteen Wave 1 regions.³⁰ Sprint acknowledges that as of the benchmark date, it had completed clearing in only seven of the fifteen regions.³¹ In six other Wave 1 regions, Sprint states that as of the benchmark date, it had entered into FRAs with all Channel 1-120 licensees, but that 15 out of 216 licensees in those regions had not cleared their channels.³² In the two remaining Wave 1 regions, Region 19 (New England) and Region 20 (Washington DC/Northern Virginia/Baltimore), Sprint acknowledges that out of 59 Channel 1-120 licensees, eight had not signed FRAs and eleven had not cleared their channels as of the benchmark date.³³

13. Sprint contends that even though it did not clear Channel 1-120 incumbents in eight of fifteen Wave 1 regions by the benchmark date, it has made "substantial progress" in each of these regions, and that some of the delays in clearing are beyond its control.³⁴ Sprint asserts that once it has signed an FRA with a licensee, it typically has no direct involvement in the physical retuning process and cannot compel the licensee to complete retuning in a timely manner.³⁵ Sprint also notes that it did not negotiate FRAs with some licensees in Regions 19 and 20 because disputed issues were referred from mediation to the Public Safety and Homeland Security Bureau for resolution.³⁶ Finally, Sprint notes that a number of public safety licensees in the National Capital Region portion of Region 20 are taking more time to plan and implement retuning due to their complex interoperability arrangements.³⁷

14. We recognize that not all aspects of the rebanding process are within Sprint's control, and that Sprint may have made substantial progress towards meeting some of the benchmark elements even if it did not meet them. The fact remains, however, that Sprint did not clear all Wave 1 Channel 1-120

²⁸ See 800 MHz Supplemental Order, 19 FCC Rcd at 25143 ¶ 53.

²⁹ RPP at 21.

³⁰ Sprint Report at 2.

³¹ *Id.*

³² *Id.* at 4-5. The six regions are Region 28 (Eastern Pennsylvania), Region 54 (Great Lakes/Chicago), Region 8 (New York Metropolitan Area), Region 6 (Northern California), Region 35 (Oregon), and Region 42 (Southern Virginia).

³³ *Id.* at 5.

³⁴ *Id.* at 4.

³⁵ *Id.*

³⁶ *Id.* at 5-6.

³⁷ *Id.* at 6-7.

incumbents by the eighteen-month date as the Commission required. Moreover, Sprint has not asserted that all of the delays were beyond its control. Finally, Sprint's contention that some delays are beyond its control is not relevant to the factual issue of whether it has met the benchmark, but goes to the issue of whether the Commission should take enforcement action against Sprint, an issue we address below.³⁸

b. Initiation of Negotiations With NPSPAC Licensees

15. The second element of the eighteen-month benchmark requires Sprint to have initiated retuning negotiations with all NPSPAC licensees in the first twenty regions on the TA's schedule.³⁹ In support of this element, Sprint reports that as of the benchmark date, it had initiated negotiations with all licensees in 37 NPSPAC regions, including all fifteen Wave 1 regions and all nineteen Wave 2 regions.⁴⁰ Sprint notes that by the benchmark date, it was in mediation with all Wave 1 NPSPAC licensees that had not reached agreement, thus exceeding the benchmark requirement that negotiations be initiated in these regions.⁴¹ With respect to Wave 2 and 3 NPSPAC licensees, Sprint states that it was in active negotiations with most NPSPAC licensees and that it had sent letters to all licensees that were not already in negotiations. Sprint reports that 88 of 137 Wave 2 and 3 licensees contacted had responded by the benchmark date, thus meeting the definition of "initiated" negotiations.⁴²

16. We conclude that Sprint has met this element of the eighteen-month benchmark. The 800 MHz Supplemental Order required that Sprint initiate negotiations with NPSPAC licensees in the same twenty regions that were the subject of the first benchmark element discussed above.⁴³ The record indicates that Sprint has initiated negotiations with NPSPAC licensees in all fifteen Wave 1 regions and in twenty-two additional Wave 2 and Wave 3 regions -- substantially more than the five additional Wave 2 regions needed to meet this benchmark element. Sprint's report indicates that as of the benchmark date, a total of 39 NPSPAC licensees in Waves 2 and 3 had not responded to Sprint's initial contact. In addition, the TA's review revealed twelve Wave 2 and Wave 3 licensees that Sprint evidently had not contacted as of the benchmark date.⁴⁴ However, even if regions in which these licensees are located are not counted for benchmark purposes, Sprint has initiated negotiations in more than the twenty required regions.

c. Enforcement of Benchmark Obligations

17. In the 800 MHz Report and Order, the Commission stated that if Sprint failed to meet the eighteen-month benchmark "for reasons that [Sprint], with the exercise of due diligence could reasonably have avoided, the Commission may consider and exercise any appropriate enforcement action within its authority, including assessment of monetary forfeitures or, if warranted, license revocation."⁴⁵ We find Sprint's failure to clear Channel 1-120 licensees from all Wave 1 regions as required by the benchmark to be a matter of considerable concern. However, Sprint's report also indicates that it has made progress in clearing Channel 1-120 in many Wave 2 and Wave 3 regions, and that it has made some additional

³⁸ See paras. 17-18, *infra*.

³⁹ "Initiated" as the term is used here means, at a minimum, contacting the NPSPAC licensee in writing, and with at least one oral two-way communication, setting out the proposed schedule of relocation, with proposed dates for each element thereof, and requesting from the NPSPAC licensee, within a date certain, a written, itemized estimate of the cost of reconfiguring its system(s). See 800 MHz Supplemental Order, 19 FCC Rcd at 25143 ¶ 53.

⁴⁰ Sprint Report at 8.

⁴¹ *Id.*

⁴² *Id.*

⁴³ See 800 MHz Supplemental Order, 19 FCC Rcd at 25143 ¶ 53.

⁴⁴ TA Certification, Schedule B.

⁴⁵ 800 MHz Report and Order, 19 FCC Rcd at 14987 ¶ 28.

progress in Wave 1 since the benchmark date.⁴⁶

18. In light of these factors, we will defer consideration for the time being of whether Sprint should be subject to monetary forfeitures or license revocation for failure to meet the benchmark. Instead, we believe it is more important to ensure that Sprint and all other interested parties focus on taking additional steps that are necessary to complete rebanding in a reasonable, prudent, and timely manner. We therefore conclude that it is in the public interest for us to adopt additional benchmarks to ensure that Sprint supports continued progress in rebanding and a smooth transition for critical public safety communications systems. Establishing such benchmarks will also provide important guidance to all stakeholders and will enhance our ability to monitor and enforce progress as rebanding moves into its later stages.

B. Additional Benchmarks

19. The rebanding process is divided into two broad stages of activity: the clearing and relocation of Channel 1-120 incumbents (Stage 1), followed by the relocation of NPSPAC incumbents to the vacated Channel 1-120 spectrum (Stage 2). Thus, timely completion of Stage 1 is essential to clear the Channel 1-120 band so that NPSPAC relocation can move forward. To date, the focus of our Stage 1 requirements has been on clearing incumbents other than Sprint and SouthernLINC from Channels 1-120. This continues to be an important goal that must be completed in the near future. In addition, however, Sprint must clear its own operations and those of Southern LINC from Channels 1-120 before NPSPAC relocation can occur. We therefore adopt new benchmarks that address both issues.

1. Completion of Channel 1-120 Clearing of Non-Sprint, Non-SouthernLINC Incumbents

20. First, with limited exceptions noted below, we require Sprint to complete relocation of all non-Sprint, non-SouthernLINC Channel 1-120 incumbents in all regions in Waves 1 through 3, and in the non-border regions of Wave 4, by December 26, 2007. We believe this is a reasonable benchmark based on Sprint's assertion that it has made substantial progress in clearing Channel 1-120 incumbents in those regions where clearing was not completed by the eighteen-month benchmark date. We also note that the TA's most recent quarterly report indicates that as of June 30, 2007, 97 percent of all Channel 1-120 licensees in Waves 1-3 have negotiated FRAs with Sprint, and 92 percent of all Channel 1-120 licensees in Waves 1-3 have physically cleared their channels.⁴⁷

21. We will exclude from this benchmark those Stage 1 licensees that also have NPSPAC facilities and that have elected to relocate both their Channel 1-120 and NPSPAC facilities in Stage 2.⁴⁸ Such coordinated relocation of Stage 1 and Stage 2 facilities belonging to the same licensee is consistent with the objective of reasonable, prudent, and timely rebanding. We will also not require Sprint to complete Stage 1 clearing in Puerto Rico by the benchmark date, because the Puerto Rico band plan is currently being revised.⁴⁹ Finally, as discussed below, beginning on October 1, 2007, we will require Sprint to provide a monthly update on its progress toward completing Channel 1-120 clearing.

⁴⁶ Sprint Report at 5, n.9.

⁴⁷ 800 MHz Transition Administrator, LLC Combined Quarterly Progress Report for the Quarter Ended June 30, 2007, filed August 31, 2007.

⁴⁸ For example, Fairfax County has both Channel 1-120 and NPSPAC facilities, and has elected to reband all of these facilities in Stage 2.

⁴⁹ Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Second Memorandum Opinion and Order*, 22 FCC Rcd 10467 (2007) at ¶ 32-33 (directing TA to provide recommendations for revised Puerto Rico band plan within 60 days of effective date of the order).

2. Clearing of Channels 1-120 by Sprint and SouthernLINC

22. We also impose benchmarks with respect to the clearing of Channel 1-120 spectrum used by Sprint and SouthernLINC. These benchmarks are essential to clear the Channel 1-120 spectrum for timely relocation by NPSPAC, and to eliminate any incentive for Sprint to delay rebanding in order to continue using 800 MHz spectrum designated for public safety as part of its own network. We are concerned that there has been uncertainty in some FRA negotiations regarding Sprint's preparedness to clear its Channel 1-120 operations. In one case involving the City of New York that was referred to the Public Safety and Homeland Security Bureau, Sprint took the position in FRA negotiations that it was not required to offer a firm date for making spectrum available to a relocating NPSPAC licensee.⁵⁰ In the *New York* case, the Bureau held that Sprint must either make spectrum available on the date requested by the licensee or offer an alternative date.⁵¹ Although Sprint has accepted the Bureau's decision in that particular case, Sprint's apparent reluctance to relinquish spectrum, coupled with its failure to meet the eighteen-month benchmark, highlights the need for a clear path to implementation of our rebanding orders and rules. We therefore take this opportunity to affirm the Bureau's *New York* holding more broadly and expand upon it.

23. First, we affirm that FRAs between Sprint and relocating NPSPAC licensees must provide for timely clearing of the necessary spectrum by Sprint to facilitate NPSPAC relocation. The *800 MHz Report and Order* requires Sprint to cease using Channel 1-120 channels to accommodate NPSPAC relocation.⁵² To ensure that this clearing process occurs in a timely manner, in any case in which a NPSPAC licensee requests access to spectrum in the new NPSPAC band because it requires the spectrum for testing purposes or to commence operations, Sprint must clear the necessary channels within 90 days of the request. For any request made on or after January 1, 2008, Sprint must clear the necessary spectrum within 60 days of the request.⁵³

24. We recognize that imposing this requirement will require Sprint to implement channel swaps and other adjustments to its own network, which could have an impact both on Sprint's network capacity and on other NPSPAC licensees in the area. We emphasize that the spectrum requirements of NPSPAC licensees take precedence over Sprint network capacity issues, and that Sprint is responsible for ensuring that other NPSPAC licensees do not experience harmful interference as a result of Sprint's own network modifications. Sprint has had ample opportunity to plan for these contingencies: it has been on notice since the *800 MHz Report and Order* of the need to vacate its Channel 1-120 spectrum to accommodate relocating NPSPAC licensees.⁵⁴ The Commission has also established mechanisms that enable Sprint to prepare for and mitigate spectrum shortfalls it may experience in accommodating rebanding by other licensees, *e.g.*, by providing access to 900 MHz spectrum and crediting Sprint for the cost of constructing additional cell sites to increase capacity.⁵⁵

25. Second, we affirm that the Commission's orders require Sprint to vacate the *entire* Channel 1-120 band, other than in Wave 4 border areas, by the end of the 36-month transition period on

⁵⁰ State of New York, *Memorandum Opinion and Order*, 22 FCC Rcd 8540, 8543 ¶ 6 (PSHSB 2007).

⁵¹ *Id.* at ¶ 6.

⁵² *800 MHz Report and Order*, 19 FCC Rcd at 15073-74 ¶ 198 (as part of relocation process in each region Sprint will "shut[] down its General Category channels" to enable NPSPAC relocation).

⁵³ These timelines will also apply to requests by NPSPAC licensees for Channel 1-120 channels currently used by SouthernLINC. In such cases, Sprint must provide SouthernLINC with replacement spectrum in accordance with their agreement.

⁵⁴ *Id.*

⁵⁵ *Id.* at 15079 ¶ 207; *800 MHz Supplemental Order*, 19 FCC Rcd at 25150 ¶ 69.

June 26, 2008.⁵⁶ The *800 MHz Report and Order* stated that "we require Nextel to vacate all of its spectrum holdings below 817 MHz/862 MHz" as part of the transition process.⁵⁷ This also requires Sprint to clear all of SouthernLINC's Channel 1-120 holdings by June 26, 2008, and provide for SouthernLINC's relocation to comparable spectrum. We emphasize that Sprint must clear its Channel 1-120 holdings by the June 2008 deadline regardless of whether all NPSPAC licensees in a given region are prepared to relocate within that time frame.

26. We disagree with Sprint's contention that requiring it to vacate spectrum by June 2008 "would seriously harm public safety" and "squander scarce spectrum resources."⁵⁸ To the contrary, Sprint's timely spectrum clearing achieves important public interest objectives in this proceeding. First, it will eliminate the risk of harmful interference to relocating NPSPAC licensees that could otherwise result from Sprint continuing to operate in the band after NPSPAC relocation has begun. Second, it will simplify and expedite the transition process, because NPSPAC licensees will not need to coordinate their relocation with Sprint to avoid such interference but can move into fully cleared spectrum. Third, it will make the new NPSPAC band available for new public safety facilities. Finally, expediting NPSPAC relocation will afford Sprint access more quickly to the 821-824/866-869 MHz band being vacated by NPSPAC licensees.

27. Nevertheless, in the event that we grant any NPSPAC licensee a waiver allowing it to relocate to the new NPSPAC band after June 26, 2008, we will allow Sprint to petition to remain temporarily on the Channel 1-120 channels that it would otherwise have to vacate to accommodate the NPSPAC system. In any such petition, Sprint must demonstrate that public safety will not be adversely affected by the extension, that it has no reasonable alternative, and that the extension is otherwise in the public interest. Any extension granted to Sprint under this procedure will require Sprint to relinquish the channels on 60 days notice by the NPSPAC licensee as described in paragraph 23 above. We also emphasize that Sprint may not under any circumstances remain on any Channel 1-120 channel once the corresponding channel in the 821-824/866-869 MHz band becomes available to it. For example, if a channel in the 821-824/866-869 MHz band is currently unoccupied by a NPSPAC licensee, and the channel becomes available to Sprint after June 26, 2008, Sprint may not continue to use the corresponding Channel 1-120 channel, even though the channel is not needed to accommodate a relocating NPSPAC licensee.

3. Clearing of Interleaved, Guard Band, and Expansion Band Channels by Sprint

28. We affirm that our orders in this docket also require Sprint to vacate all of its remaining spectrum in the interleaved portion of the 800 MHz band, as well as the Expansion Band and Guard Band, by June 26, 2008, except in Wave 4 border areas, regardless of any other rebanding contingency.⁵⁹ Sprint has already vacated some spectrum in these portions of the band to accommodate relocation of Stage 1 licensees from Channels 1-120. Prior to June 26, 2008, Sprint may continue to use its spectrum in the interleaved, Guard, and Expansion Bands to the extent it is not needed for relocation of other licensees. However, Sprint must clear this remaining spectrum by the end of the transition on June 26, 2008 because the channels that Sprint vacates will revert to the Commission for re-licensing, and public safety will have

⁵⁶ Because Sprint has not received replacement spectrum assignments from the TA in border areas, we will address its spectrum-clearing obligations in these areas at a later date.

⁵⁷ *800 MHz Report and Order*, 19 FCC Rcd at 14977 ¶ 11.

⁵⁸ Sprint Ex Parte Letter, filed September 6, 2007, at 1-2.

⁵⁹ The interleaved portion of the 800 MHz band at 809-815 MHz/854-860 MHz consists of interleaved public safety, Business/Industrial Land Transportation (B/ILT) and SMR channels. Sprint must also vacate the Expansion Band and the Guard Band portions of the 800 MHz band, which are located at 815-816/860-861 MHz and 816-817/861-862 MHz, respectively, except in the Southeast region.

exclusive access to the vacated interleaved channels for a three-year period after rebanding is completed in each region.⁶⁰ Sprint's timely relinquishment of these spectrum rights therefore accomplishes important public interest objectives by reducing the potential for interference and increasing the amount of 800 MHz spectrum available for public safety use. Moreover, as in the case of Channels 1-120, the Commission has enabled Sprint to prepare for and mitigate spectrum shortfalls by providing Sprint access to 900 MHz spectrum and crediting Sprint for the cost of constructing additional cell sites to increase its network capacity.⁶¹

4. Monthly Reporting Requirements

29. To assist in monitoring and enforcing each of the band-clearing conditions imposed on Sprint, as set forth above, we require that beginning on October 1, 2007, Sprint file monthly reports with the TA and PSHSB on its clearing of the Channel 1-120 spectrum. These reports are intended to provide specific, verifiable information to allow us to monitor Sprint's progress and determine whether it is in compliance with each of the benchmarks and conditions of this order, as well as with other applicable provisions of the 800 MHz rebanding rules.

30. Specifically, Sprint must include the following information in each monthly report with respect to clearing of Channels 1-120. This information must be provided separately for each NPSPAC region:

- (1) The number of non-Sprint, non-SouthernLINC licensees that have been cleared from Channels 1-120, and the number that remain to be cleared;
- (2) For each region in which SouthernLINC operates, the number of SouthernLINC channels in the Channel 1-120 band that have been cleared, and the number that remain to be cleared;
- (3) The number of Channel 1-120 channels that are being used by Sprint in its own network, and the number of Channel 1-120 channels that Sprint has vacated; and
- (4) The identity of each NPSPAC licensee that has requested that Sprint vacate Channel 1-120 channels, the date of the licensee's request, the number of channels that Sprint has been asked to vacate, and the date proposed by the licensee for Sprint to vacate the specified channels.

31. These monthly reports by Sprint will assist the Commission in monitoring Sprint's compliance with its Stage 1 implementation obligations, but will also provide important information relevant to the progress of Stage 2 rebanding of NPSPAC licensees. This reporting requirement is imposed as a separate condition on Sprint's licenses as modified in the Commission's orders in this proceeding. To the extent that Sprint fails to satisfy this reporting requirement, the Commission may consider any appropriate enforcement action within its authority, including but not limited to revocation of Sprint's modified licenses. Sprint also remains subject to all prior requirements and license conditions adopted in this proceeding.

C. 30-Month Benchmark

32. In addition to the eighteen and 36-month reconfiguration deadlines established by the Commission in this proceeding, the *800 MHz Report and Order* established a 30-month benchmark for the 800 MHz rebanding process. Specifically, the Commission required that all 800 MHz systems "must have commenced reconfiguration within 30 months of the Commission *Public Notice* announcing the start date of reconfiguration in first NPSPAC region."⁶² Under the rebanding schedule, this 30-month

⁶⁰ *Id.* Public safety will also have priority access to other ESMR vacated spectrum in the interleaved band.

⁶¹ *Id.* at 15079 ¶ 207; *800 MHz Supplemental Order*, 19 FCC Rcd at 25150 ¶ 69.

⁶² *800 MHz Report and Order*, 19 FCC Rcd at 15075 ¶ 201. 47 C.F.R. § 90.677(a) ("Relocation will commence according to the schedule set by the Transition Administrator but all systems must have commenced reconfiguration (continued....)")

date falls on December 26, 2007. To ensure that all parties take the necessary steps to meet this benchmark, we provide the following guidance.

33. In a companion Public Notice adopted today, we have adopted new timelines for non-border area NPSPAC licensees to complete planning and FRA negotiations and to begin rebanding implementation.⁶³ Licensees who are in compliance with these timelines as of December 26, 2007 will be deemed to be in compliance with the 30-month benchmark.⁶⁴ We will apply the benchmark to all Wave 1-3 licensees and to all Wave 4 licensees that have received frequency assignments from the TA as of the release date of this order. However, we will not apply this benchmark to Wave 4 licensees that have not received frequency assignments because their systems are in border regions affected by ongoing negotiations with Canada and Mexico. We will establish an appropriate implementation benchmark for Wave 4 licensees at a later date.

34. We direct the TA to submit a report to the Public Safety and Homeland Security Bureau by January 15, 2008 regarding whether the 30-month benchmark as defined above has been met. The TA report should certify whether all covered licensees have complied with the timelines set forth in the Public Notice, and identify all cases in which the timelines have not been met.

D. Rebanding in Markets With Channel 69 Incumbents

35. Two NPSPAC licensees in eastern Pennsylvania and four NPSPAC licensees in the Atlanta, Georgia area have filed requests for extension of the June 26, 2008 rebanding deadline based on their proximity to incumbent full power analog TV broadcasters WFMZ-TV and WUPA, operating on Channel 69 (800-806 MHz) in Allentown, Pennsylvania and Atlanta, respectively.⁶⁵ These NPSPAC licensees (collectively, Petitioners) express concern that if they retune to the new NPSPAC band (806-809 MHz) before the February 17, 2009 DTV transition date, they will receive out-of-band emission (OOBE) interference on their new NPSPAC channels from the Allentown and Atlanta Channel 69 incumbents. For the reasons set forth below, we grant Petitioners' requests in part and will allow them to delay the commencement of their infrastructure retune until March 1, 2009, after the Channel 69 incumbents have vacated the spectrum. However, we direct Petitioners to proceed with (and Sprint to pay for) planning and other preparatory rebanding activity (*e.g.*, replacement and reprogramming of mobiles) that can occur prior to the DTV transition date.

(Continued from previous page)

within thirty months of release of a Public Notice announcing the start date of reconfiguration in the first NPSPAC region.”).

⁶³ See “FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding,” *Public Notice*, WT Docket No. 02-55, FCC 07-168 (released September 12, 2007) (*800 MHz Procedures Public Notice*).

⁶⁴ The 30-month benchmark also applies to Stage 1 incumbents relocating from Channels 1-120. However, the requirement that these licensees “commence” reconfiguration by December 26, 2007 is effectively superseded by the separate requirement that they complete rebanding by the same date, as discussed in Section III.B.1 above. See paragraphs 20-21, *supra*.

⁶⁵ The Cities of Bethlehem and Reading, Pennsylvania (collectively, Pennsylvania Petitioners) have filed waiver requests based on their proximity to station WFMZ-TV in Allentown, PA. See Request for Waiver of the City of Bethlehem, Pennsylvania, filed May 30, 2007 (Bethlehem Waiver Request); Request for Waiver of the City of Reading, Pennsylvania, filed July 10, 2007 (Reading Waiver Request). In Georgia, Rockdale County, Newton County, the City of Covington, Walton County, and Spalding County (collectively, Georgia Petitioners) have filed waiver requests based on their proximity to station WUPA in Atlanta, GA. See Request for Limited Waiver of Rockdale County, Georgia, filed April 10, 2007 (Rockdale Waiver); Request for Limited Waiver of the City of Covington and Newton County, Georgia, filed March 29, 2007 (Covington/Newton Waiver Request); Request for Limited Waiver of Walton County, Georgia, filed May 16, 2007 (Walton Waiver Request); Request for Limited Waiver of Spalding County, Georgia, filed April 26, 2007 (Spalding Waiver Request).

1. Background

36. The adjacency of TV Channel 69 to the low end of the 800 MHz band creates the potential for OOB interference by full power analog Channel 69 broadcasters to 800 MHz systems that use the lower portion of the 806-809 MHz portion of the band in the vicinity of the broadcast transmitter. The 806-809 MHz band is used for mobile-to-base transmission and mobile-to-mobile transmission. Thus, where an 800 MHz base station receiver is located in close proximity to a full power Channel 69 transmitter, the broadcast signal may interfere with the base station's ability to receive transmissions from mobile radios on the system, particularly when the mobile signal is attenuated because the mobile is transmitting at some distance from its associated base station. The potential for interference also exists for mobile-to-mobile communications when the mobiles are in close proximity to a full power Channel 69 transmitter.⁶⁶

37. In 1991, the Commission addressed this potential for interference by Channel 69 broadcasters to 800 MHz systems by requiring Channel 69 licensees to construct their facilities to protect previously existing 800 MHz facilities from OOB interference, *e.g.*, through use of directional antennas, filters, and similar measures.⁶⁷ The Commission further stated that where a Channel 69 station "is authorized and operating prior to the authorization and operation of the land mobile facility, . . . [it] must attenuate its emissions within the frequency range 806 to 809 MHz if necessary to permit reasonable use of the adjacent frequencies by land mobile licensees."⁶⁸

38. Petitioners contend that despite these measures, their NPSPAC public safety operations could be susceptible to interference from Channel 69 transmissions when they complete rebanding and begin operating in the 806-809 MHz band. In particular, they contend that some of their base stations are located close enough to a Channel 69 transmitter to be affected, particularly when they use channels at the lower end of the 806-809 MHz band.⁶⁹ Also, they note that rebanding will result in one of the NPSPAC mutual aid channels moving to 806.125 MHz, immediately adjacent to Channel 69.⁷⁰ Accordingly, Petitioners seek to postpone their rebanding until WFMZ and WUPA have vacated Channel 69 in February 2009 as part of the DTV transition. Specifically, the Pennsylvania Petitioners seek an extension until the later of (1) six months after completion of a Frequency Relocation Agreement with Sprint with regard to mutual aid channels, or (2) official notification to the Commission that WFMZ has ceased operation on Channel 69.⁷¹ The Georgia Petitioners seek a complete suspension of their rebanding negotiations with Sprint until September 2008.⁷²

39. The Georgia Technology Authority (GTA), a NPSPAC licensee operating in the Atlanta area as well as other parts of Georgia, opposes the Georgia Petitioners' extension request. GTA argues that there are numerous personnel already working on rebanding and that the economic cost of idling

⁶⁶ Public safety licensees frequently rely on mobile-to-mobile communications (*i.e.*, communications that are not relayed through a base station) for interoperability on mutual aid channels.

⁶⁷ Resolution of Interference Between Channels 14 and 69 and Adjacent-channel Land Mobile Operations, *Report and Order*, MM Docket No. 87-465, 6 FCC Rcd. 5148 (1991).

⁶⁸ 47 CFR § 73.687(e)(3).

⁶⁹ For example, Bethlehem notes that one of its transmitter sites is located approximately two miles from the Channel 69 transmitter. It also points out that some of its replacement channels are close to the 806 MHz band edge. Bethlehem Waiver Request at 2.

⁷⁰ See, *e.g.*, Reading Waiver Request at 2.

⁷¹ Reading Waiver Request at 5, Bethlehem Waiver Request at 4.

⁷² Covington/Newton Waiver Request at 2, Rockdale Waiver Request at 2, Spalding Waiver Request at 2, Walton Waiver Request at 2.

these persons and their organizations is too high to justify postponing the rebanding process.⁷³ GTA also argues that allowing the licensees that have sought extensions to delay their rebanding while other Georgia licensees move forward will jeopardize interoperability between the two groups of licensees during the extension period.⁷⁴ In lieu of an extension, GTA proposes to undertake an interference study in the Atlanta area, at Sprint's expense, to determine the feasibility of rebanding while WUPA is still operating on Channel 69, and the possible use of interference mitigation methods such as filters or enhancing the strength of the public safety signal.⁷⁵

2. Discussion

40. Parties seeking a waiver must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁷⁶ We conclude that the waiver standard has been met in this case.

41. As a threshold matter, we agree with Petitioners that due to their systems' close proximity to the WFMZ and WUPA Channel 69 transmitters, they could experience harmful interference to some of their operations if they retune to their new NPSPAC replacement channels before WFMZ and WUPA vacate Channel 69. Petitioners have base stations located near the Channel 69 transmitter sites, and some of their replacement channels will be close to the 806 MHz band edge. In addition, Petitioners may receive interference if they attempt to use the new NPSPAC mutual aid channel at 806.125 for mobile-to-mobile communications near the broadcast transmitter. Although the existing Part 73 rules require Channel 69 broadcasters to limit out-of-band emissions into the 800 MHz band, NPSPAC licensees could be more susceptible to these emissions than pre-rebanding licenses on the same frequencies. Prior to rebanding, the 806-809 MHz segment of the band was occupied by a mix of industrial, public safety, and commercial licensees, including Sprint, which used a significant amount of spectrum in the band for its cellular-architecture network. In the post-rebanding configuration, the 806-809 MHz segment will be the exclusive domain of NPSPAC licensees, which typically operate communication systems that employ high-site architecture—a form of architecture that is more susceptible than cellular-architecture systems to broadcast interference. NPSPAC licensees are more likely to conduct mobile-to-mobile communications that would be susceptible to interference.

42. Given the possibility of interference, we do not believe requiring Petitioners to retune by the June 2008 deadline would serve the underlying purpose of the rule. The purpose of the 36-month rebanding timeline is to ensure timely abatement of interference to 800 MHz public safety systems from other 800 MHz commercial systems that use incompatible cellular architecture.⁷⁷ However, in the 800 MHz rebanding proceeding, the Commission did not consider the impact that Channel 69 incumbents might have on rebanding 800 MHz licensees operating in the vicinity of the incumbents' transmitters. We conclude that in this limited set of circumstances, requiring Petitioners to adhere to the June 2008 rebanding deadline would frustrate rather than further the purpose of the rule by unnecessarily exposing them to broadcast interference.

43. We also conclude that a waiver is in the public interest because alternative methods for

⁷³ Letter, dated April 19, 2007 from Peter Tannenwald, Esq. and Ramsey L. Woodworth, Esq., Counsel for Georgia Technology Authority to Marlene H. Dortch, Secretary, FCC at 2 (GTA Letter).

⁷⁴ *Id.*

⁷⁵ *Id.* at 3.

⁷⁶ 47 C.F.R. § 1.925(b)(3).

⁷⁷ 800 MHz Report and Order, 19 FCC Rcd at 14972 ¶ 2.

mitigating potential interference from full power Channel 69 transmissions are costly and uncertain. In theory, the interference risk to Petitioners would be reduced if the Channel 69 incumbents reduced power or installed filters to limit the OOB impact of their broadcast signals. Alternatively, Petitioners could add base stations in the vicinity of the broadcast transmitters, thus reducing the attenuation of mobile signals resulting from distance to the nearest base station. However, all of these methods impose significant costs either on the Channel 69 incumbent or the public safety licensee, and even if these methods were used, they might not be sufficient to eliminate interference in the immediate vicinity of a full power broadcast transmitter.

44. In contrast, an extension avoids the need to spend substantial resources to mitigate a potential interference problem that is inherently temporary. Once the Channel 69 incumbents vacate their spectrum in February 2009, they will no longer pose an interference risk to Petitioners' systems. This extension also has only a limited effect on the overall timetable for NPSPAC rebanding. Petitioners are uniquely affected by this interference issue because they operate in close proximity to full-power Channel 69 broadcasters, whereas the vast majority of NPSPAC licensees operate in areas where there is no full power Channel 69 incumbent or the incumbent is more distant, and therefore such licensees do not need to delay rebanding. In addition, as discussed below, the Georgia and Pennsylvania Licensees do not need to postpone all rebanding activity until after the February 2009 transition date, but only the final retuning of their base stations to the new channels.

45. While we are allowing Petitioners to delay final retuning to the new NPSPAC band, these licensees can take other preparatory rebanding steps well before February 2009 while continuing to operate on their existing NPSPAC channels. In this respect, we disagree with those Petitioners who advocate postponing all rebanding activity until mid-2008.⁷⁸ Petitioners have received their new frequency assignments from the Transition Administrator, and can therefore complete planning and negotiation of FRAs with Sprint. They can also proceed with replacing and reprogramming their mobile and portable radios so that they are capable of operating on the new NPSPAC band. In short, the record indicates no reason why Petitioners cannot complete all aspects of rebanding except the retuning of the system infrastructure (and any post-retuning work that may be required, e.g., removal of pre-rebanding channels) prior to February 2009.

46. We disagree with GTA's contention that an extension is too costly and will impair interoperability for NPSPAC licensees in the Atlanta area.⁷⁹ It is true that an extension may increase some rebanding costs, e.g., due to increases in equipment and labor costs, or due to NPSPAC licensees needing to expand their systems on pre-rebanding channels during the transition period. However, these costs will be fully covered by Sprint, and we do not anticipate that delay of a few months will have a significant impact. As the Georgia Petitioners note, public safety systems plan their budgetary cycles well in advance so that the likelihood of an unanticipated dramatic change in a public safety network is highly unlikely.⁸⁰ Similarly, grant of an extension will not jeopardize interoperability. As the Georgia Petitioners point out, Sprint will maintain the five NPSPAC mutual aid channels in both the new and old NPSPAC bands until all rebanding within the region is complete.⁸¹ Moreover, if necessary, the TA can require, and Sprint must provide for, dedication of additional channels and facilities to support continued

⁷⁸ Reading Waiver Request at 3-4, Bethlehem Waiver Request at 3.

⁷⁹ See GTA Letter at 3.

⁸⁰ See Letter dated May 3, 2007 from Mike Smith, Director Covington-Newton County 911 Communications; Carolyn Hunter, Director, Rockdale County 911 Communications; Wendra Williams, Director, Walton County 911 Communications and Eddie Freeman, Chairman, Spalding County Board of Commissioners to Marlene H. Dortch, Secretary, FCC at 3 (Opposition to GTA Letter). If there are incremental changes to the system, such as construction of new base stations or the purchase of additional mobile or portable units during the interim period, these changes can be accommodated through change orders.

⁸¹ *Id.*

interoperability between Petitioners' systems and more other NPSPAC systems.

47. We have made it abundantly clear that we expect band reconfiguration to move forward expeditiously.⁸² Therefore, we will only extend the implementation deadline to allow the applicants to begin infrastructure retuning in March 2009. We also see no need to undertake an interference study in the Atlanta area as proposed by GTA.⁸³ Because Petitioners do not have to complete rebanding or commence operations on their new frequencies until the broadcasters have vacated Channel 69, such a proposed study at Sprint's expense will serve no useful purpose.

48. Finally, we delegate authority to the Public Safety and Homeland Security Bureau to consider future requests by 800 MHz licensees to extend the 36-month deadline as it applies to the rebanding of their particular systems.⁸⁴ We direct the Bureau to subject such extension requests to a high level of scrutiny. Licensees submitting requests to the Bureau will be expected to demonstrate that they have worked diligently and in good faith to complete rebanding expeditiously, and that the amount of additional time requested is no more than is reasonably necessary to complete the rebanding process.

IV. ORDERING CLAUSES

49. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(f), 309, 316, 332, 337 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(f), 309, 316, 332, 337 and 405, this Third Memorandum Opinion and Order IS HEREBY ADOPTED.

50. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Sprint Nextel Corporation, on January 27, 2006 IS DISMISSED to the extent described herein.

51. IT IS FURTHER ORDERED that, as a condition of its 800 MHz and 1.9 GHz modified licenses, Sprint Corporation shall comply with the benchmarks and reporting requirements set forth herein.

52. IT IS FURTHER ORDERED that the 800 MHz Transition Administrator, on January 15, 2008, shall submit a report on the progress of band reconfiguration to the extent described herein.

53. IT IS FURTHER ORDERED pursuant to the authority of Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.925 of the Commission's Rules, 47 C.F.R. § 1.925 that the Requests for Waiver submitted by the Cities of Bethlehem and Reading, Pennsylvania, and Covington, Georgia, and the Counties of Rockdale, Newton, Walton, and Spalding, Georgia, in the above-captioned proceeding ARE GRANTED to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸² Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 22 FCC Rcd 9818 (2007) (*Rebanding Cost Clarification Order*), Joint Statement of Chairman Kevin L. Martin and Commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate and Robert M. McDowell (Joint Statement).

⁸³ See GTA Letter at 3.

⁸⁴ The Bureau will review such requests in accordance with the guidance provided in the companion *800 MHz Procedures Public Notice* that we adopt today. See *800 MHz Procedures Public Notice* at 5-6. We note that this delegation is not limited to waiver requests based on proximity to Channel 69 broadcasters.

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: *Improving Public Safety Communications in the 800 MHz Band; Petitions for Waiver of Bethlehem, Pennsylvania and Reading, Pennsylvania; Petitions for Waiver of Rockdale County, Newton County, City of Covington, Walton County, and Spalding County, Georgia, WT Docket No. 02-55, Third Memorandum Opinion and Order.*

FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding, WT Docket No. 02-55, Public Notice.

My goal for 800 MHz rebanding has been for it to proceed as quickly and effectively as possible. In light of that goal, the Commission has devoted significant resources to 800 MHz rebanding by working closely with all 800 MHz stakeholders – public safety, Sprint Nextel, equipment vendors, and the Transition Administrator – to resolve contested issues and expedite the pace of rebanding activity. To date, the Public Safety and Homeland Security Bureau has issued over 25 orders and public notices resolving disputes and provides guidance to negotiating licensees that we expect to help speed ongoing negotiations.

While the Commission has hoped to be further along, we are committed to ensuring that 800 MHz rebanding is completed in a timely manner while, at the same time, protecting full continuity of public safety operations during the transition. Today's actions demonstrate that commitment. Among other things, the Order finds that Sprint has not met its 18-month benchmark for clearing Channel 1-120 incumbents as required by the 800 MHz rebanding process, and imposes new benchmarks on Sprint, including monthly reports on its channel-clearing efforts, to bring the process back on track. The order also reaffirms Sprint's obligation to vacate its remaining spectrum in Channels 1-120, as well as other portions of the 800 MHz band that are to be made available to public safety, in accordance with prior Commission orders.

As the companion Public Notice makes clear, the obligation to complete the rebanding process does not fall on Sprint alone, but requires all stakeholders to redouble their efforts. The Commission will continue to do its part to ensure that the 800 MHz rebanding process is completed in a timely and efficient manner, minimizing the burden on public safety, and preserving public safety's ability to operate during the transition. To do otherwise would abdicate our responsibility at a time when it is more important than ever to ensure that first responders have the communications capabilities they need to provide for the safety of our nation and its citizens.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Improving Public Safety Communications in the 800 MHz Band; Petitions for Waiver of Bethlehem, Pennsylvania and Reading, Pennsylvania; Petitions for Waiver of Rockdale County, Newton County, City of Covington, Walton County, and Spalding County, Georgia, WT Docket No. 02-55, Third Memorandum Opinion and Order.*

FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding, WT Docket No. 02-55, Public Notice.

The two items we release today make clear that the Commission remains committed to bringing the 800 MHz rebanding process to a successful close and is more than willing to wade into the gritty details to encourage this result. Our goal has always been, and remains, to resolve the dangerous interference between commercial and public safety users as quickly as possible while still protecting ongoing operations in this band.

The two items we release today make clear that both sides of the table in the ongoing negotiations—industry and public safety—bear equal measures of responsibility to move forward expeditiously. We will not tolerate commercial users remaining in their existing section of the band too long, nor will we grant requests for extension from public safety users that have not acted diligently and expeditiously to move this process along.

I thank Chief Poarch and the Bureau for their hard work on these items.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: *Improving Public Safety Communications in the 800 MHz Band; Petitions for Waiver of Bethlehem, Pennsylvania and Reading, Pennsylvania; Petitions for Waiver of Rockdale County, Newton County, City of Covington, Walton County, and Spalding County, Georgia, WT Docket No. 02-55, Third Memorandum Opinion and Order.*

FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding, WT Docket No. 02-55, Public Notice.

As with our decision today on Enhanced 911 services, these two items on rebanding the 800 MHz band are both timely and important. The goal of this rebanding is to minimize interference between public safety and commercial users in this band. The public safety community uses this spectrum to fulfill its critical mission of protecting the lives, health, and property of all Americans, and to help ensure homeland security. Once rebanding is complete, public safety will be able to use this spectrum more effectively to support its mission, while commercial providers will be able to serve customers more effectively.

It is, therefore, of utmost importance that the transition continues on schedule. I believe the guidelines established in these items will help in that regard, and I urge all the parties involved in this effort to continue to work to complete this rebanding.

I thank the staff of the Public Safety and Homeland Security Bureau for their work on this important item.